

REMARKS/ARGUMENTS

Claims 4, 8, 9, 11-13, 18, and 24-40 are pending. The Office Action rejects claims 4, 8, 9, 11-13, and 18 under 35 U.S.C. §112, ¶ 2 and 35 U.S.C. §103(a) as obvious over Conklin (U.S. 6,141,653) in view of Cornelius (U.S. 7,069,234). These rejections are respectfully traversed.

35 U.S.C. §112 Rejections

The Office Action rejects independent claim 4 and its dependent claims 8, 9, and 11-13 under §112 for including limitations for which "there is no structure set forth in the claim." The language identified by the Examiner is deleted, rendering this rejection moot. It is respectfully noted that similar features are presented in new claim 32, but with corresponding structure.

Although claim 18 is identified as rejected under §112 ¶ 2, the Office Action provides no explanation of or basis for the rejection. Claim 18 is a method claim, and therefore does not have the method/system problem alleged to exist in claim 4. Therefore, it is respectfully submitted that the §112 rejection of claim 18 is not properly supported by the Office Action, and withdrawal is requested.

35 U.S.C. §103 Rejections: Conklin Fails to Disclose or Suggest Evaluating Whether the Seller has Complied with the Seller's Obligations.

Independent claim 18 recites, *inter alia*,

receiving and storing electronic **evidence that the seller has performed in connection with fulfilling the seller's obligations** as defined by the purchase order agreement; and
electronically **evaluating whether the seller has complied with the seller's obligations** as defined by the purchase order agreement.

Independent claim 4 recites similar features. The Examiner asserts that Conklin discloses evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement at Figure 1g (68), Figure 8 (580, 585), Figures 15a-23, Figure 30, column 14: 59-62, column 15: 7-12, and column 27: 6-10. Applicants respectfully disagree.

Conklin merely describes a system for *negotiating* commercial contracts, which is termed an iterative, multivariate system. For example, the Abstract illustrates the various applications for the invention including online contract negotiations between different commercial parties.

The Conklin system facilitates the negotiation of contracts and records the negotiated exchanges between a buyer and seller. (*See, e.g.*, "Non-repudiation" beginning on col. 30, line 32 through col. 31, line 25.)

As a further example, col. 13, line 66 - col. 14, line 26, succinctly discloses the Conklin system as a "multivariate negotiations engine for iterative bargaining." The rest of this passage specifically points out that the Conklin system is used to create a central location for *negotiating* a contract, including maintaining "internal databases that contain the history of all transactions in each community, so that sponsors, buyers and sellers may retrieve appropriate records to document each stage of interaction and negotiation." (col. 14, lines 21-25). Notably, Conklin fails to disclose any business processes beyond the original contract negotiation.

Thus, Conklin is merely a *negotiation tracking* system, and does not disclose "receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement" or "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement." The Conklin system is only concerned with the underlying electronic contract and not with the *fulfillment* of the contract.

Each of the Examiner's asserted positions that Conklin discloses the recited limitation of "electronically evaluating" is addressed in further detail below. It is respectfully noted that these or similar arguments have been previously presented, such as in the Appeal Brief filed January 8, 2007, but have never been directly addressed by the Examiner. For example, the Office Action mailed May 10, 2007 merely repeats an earlier rejection, cites to Cornelius as showing "electronic" evaluation, and asserts that the arguments in the Appeal Brief are rendered moot by the "new" rejection. However, the arguments regarding Conklin are not addressed in either the May 10, 2007 Office Action or the present Office Action.

Figure 1g, Element 68

Fig. 1(g) is described on col. 15, lines 49-50 as "a block diagram showing some of the main interactions enabled by the present invention." Element 68 includes the box under the Sponsor Process including the text "Deal Concluded & Archived." Col. 19, lines 47-48 clarifies

that "[o]nce a deal is concluded it is archived 68, by multivariate negotiations engine 21 2 on behalf of seller." This passage does **not** assert that the Conklin system "electronically evaluates whether the seller has complied with the seller's obligations as defined by the purchase order agreement," rather this passage merely states that a "deal," which includes the negotiated terms, can be stored by the engine 212.

For further clarification regarding Fig. 1(g), col. 19, lines 28-37 describe "order activity 58 which allows the seller to follow activity by e-mail or browser or similar means, and request data downloads or activity reports on transaction data." (col. 19, lines 34-37). As to the term "transaction data," Conklin is unclear as to whether this transaction data relates to the procurement and shipment of goods and services or to stages of negotiations. Regardless of this lack of distinction, it is clear that again Conklin does not disclose "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement," because, among other reasons, the disclosed Conklin system only states "concluded & archived," which does not expressly include any step of electronic evaluation by the Conklin system.

Figure 8, Elements 580 and 585

Fig. 8 illustrates a flowchart of the reporting features of the Conklin system while the specification of Conklin omits any discussion of Fig. 8, elements 580 and 585. Looking specifically at Fig. 8, box 570 states that "[s]ellers may view their transaction records from pending to final sales . . . Orders are held in this pending database until they are closed and archived by the Seller." (emphasis added). Step 580 is merely a decision block indicating whether the negotiated element(s) has(ve) been shipped and if so, step 585 indicates that the "[o]rder is marked as shipped in the database" and this information is available to the Seller.

Fig. 8, elements 570, 580 and 585 are nothing more than reporting functions relating to the various stages of the reports 21 1-02. Fig. 8 and the specification do not indicate that if the product is shipped, any shipment information is compared to negotiated contract information, rather step 580 merely states that the order "is marked as shipped." Allowing a user to view transaction records and mark an order as shipped in the database and making this information

available to the seller is wholly inconsistent with "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement," because the Conklin system does not provide any disclosure of any electronic evaluation of the seller's compliance with the defined obligations.

Figures 15a-23

Figures 15a - 23 illustrate various sample usage screens of the Conklin system. These figures merely illustrate the iterative nature of negotiations, the primary purpose of the Conklin system. Figure 15a, while missing any supporting discussion in the specification, merely illustrates a sample screen shot of accounts waiting for the seller's approval. This screen shot does not disclose the Conklin system "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement."

Figures 15b-23 illustrate different processing screen shots and sample electronic mail communications to different parties. The Examiner-cited figures merely illustrate input and output information processed through the Conklin system. For example, box 370 in Fig. 16 states the attached is "a proposed Letter of Credit from ABC, Inc." upon which the seller may approve or edit various fields. Figs. 17-23 illustrate nothing more than the text of sample emails that can be transmitted between the contract parties, including an automated message that a sample item has been shipped (Fig. 23). These sample screen shots and sample email texts do not disclose "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement," but rather merely relate to the negotiation of contracts.

Figure 30

Figure 30 illustrates a wire transfer instruction sheet which is to be printed out and taken to a bank for making a wire transfer payment. This screen shot and the accompanying disclosure on col. 27, lines 26-31 do not disclose "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement," but rather only provides pre-formatted paperwork for being printed and provided to the buyer's bank and Conklin does not disclose an electronic evaluation to generate the sheet.

Column 15, Lines 7-12

The Examiner-cited passage states as follows:

"Still another aspect of the present invention is that sponsors can perform many more functions, such as establishing standards, basic contract terms for the community (if desired), removing non-compliant participants, hanging the structure of the seller and buyer databases, and so on than existing systems allow any administrator to perform."

This passage clearly and succinctly delineates steps that the "sponsor" can perform, such as removing non-compliant participants. This passage does not disclose "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement," because, among other reasons, the sponsor being able to remove non-compliant participants and the subsequent removal of participants is not an electronic evaluation. The Examiner-cited passage does not state that the Conklin system evaluates participant actions, but merely states that if a party is non-compliant, a sponsor has the ability to remove the participant.

Column 27, Lines 6-10

This cited passage states as follows:

In a proposed letter of credit, such as that shown in FIG. 16, the buyer's bank assumes the full credit risk, and is absolutely obligated to pay the seller, provided the seller ships goods in a way that conforms in every detail to the terms of the letter of credit.

This passage does not support the proposition the Conklin system "electronically evaluates whether the seller has complied with the seller's obligations as defined by the purchase order agreement," because this passage states nothing more than the known existing *modus operandi* for the use of letters of credit, with reference to the sample letter of credit illustrated in Fig. 16. The cited passage does not disclose that the Conklin system performs any electronic evaluation, which is outside of the scope of the Conklin system being an iterative negotiation system.

35 U.S.C. §103 Rejections: Cornelius Fails to Remedy the Defects of Conklin.

The Office Action concedes that Conklin fails to show electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement, but asserts that Cornelius discloses electronic evaluation at Figures 23-25 and 31-32, and column

23, lines 15-55. Applicants respectfully disagree. Cornelius merely describes a system that allows a buyer and seller to specify requirements for each party to a purchase order that is stored in the system. As with Conklin, Cornelius only relates to the *negotiation* of a contract. There is no suggestion of evaluating whether a party has complied with obligations imposed by the contract. Each of the positions asserted by the Office Action is considered in further detail below. Whether considered alone or in combination, Conklin and Cornelius fail to disclose or suggest all the features recited in the claims and the claims are allowable over the cited art. Withdrawal of the pending rejections is respectfully requested.

Figures 23-25

Cornelius describes Figure 23 as "illustrating a process for completing a purchase order/invoice." Col. 20, lines 32-33. Notably, all the steps shown in Figure 23 relate to constructing the purchase order, *i.e.*, negotiating the initial contract. The final step of the figure describes repeating steps (B) through (F) (presumably steps 2304-12) "until there are no further amendments." That is, the buyer and seller can amend the purchase order. There is no suggestion of evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement, or performing any other sort of evaluation. Figures 24 and 25 merely provide examples of a purchase order pro forma invoice created using the process of Figure 23. *See* col. 20, line 58 - col. 21, line 40. Thus, Figures 23-25 fail to disclose evaluating whether a seller has complied with the seller's obligations, at least because storing the terms of a purchase agreement has nothing to do with evaluating whether those terms have been met.

Figures 31-32 and Column 23, Lines 15-55

Figures 31-32 are described at column 23, lines 15-47:

FIG. 31 illustrates a VTrade compliance engine 3100. The compliance engine has a fully-automated compliance checking capability built into the VTrade Web solution, which comprises the VTrade Web front page...

An automatic check is triggered once Seller and Buyer signs off digitally on Main Menu of Document Creator for overall agreement (all terms of documents required by Buyer is agreed, including physical documents checked outside of VTrade). Two types of automated compliance check are performed simultaneously:

i) Combined Purchase Order Proforma Invoice 3102 against transportation document (Bill of Lading, Airwaybill, Truck BL)

ii) Cross commercial shipping documents check.

The compliance checking is performed through data validation on defined parameters of structured formats for text. Once the compliance engine finds all structured fields/tag are in compliance (clean), an automatic signal is sent to the bank/buyer for payment authorization. When payment authorization is received, the signal will prompt Visanet to credit the seller's account. Anytime the value of the data falls outside the parameter of the structured field, it is rejected as 'discrepant.' The rejection will be automatically sent and highlighted to both buyer and seller electronically. Only upon the completion of all checks of structured fields will discrepancy signal be sent to buyer and seller, who will renegotiate on the highlighted discrepancies on VTrade Web's electronic platform FIG. 32 illustrates a first option of documentary compliance in a VTrade system. Here, only VTrade 3200 checks the electronic documents.

Col. 23:14-47 (emphasis added). Notably, this process only verifies the integrity of the purchase order itself, such as whether the parameters included in the purchase order are in compliance with the structured format of the relevant fields of the pro forma purchase order. There is no suggestion that the system compares terms of an agreed-upon purchase order against actions performed by the seller or buyer at all, much less that it evaluates whether the seller has complied with the seller's obligations as defined by the purchase order agreement. Again, the cited drawings and text merely describe the initial negotiation of a purchase order. For at least this reason, Cornelius fails to disclose evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement as required by the claims.

Conklin in View of Cornelius

Since both Conklin and Cornelius fail to disclose or suggest at least the features discussed above, whether considered alone or in combination they do not support a *prima facie* case of obviousness of the claims. For at least the reasons presented herein claims 4 and 18, and all claims dependent therefrom, are allowable over the cited art. Withdrawal of the rejections is respectfully requested.

Claims 24-31

Independent claim 24 recites, *inter alia*,
receiving and storing electronic evidence that the seller has performed
at least part of an obligation of the seller defined by the modified purchase
order agreement; and
electronically evaluating whether the seller has fulfilled the obligation
of the seller.

For at least the same reasons described above with respect to independent claims 4 and 18, the
cited references fail to disclose or suggest at least evaluating whether the seller has fulfilled the
obligation of the seller. Therefore, claim 24 and all claims dependent therefrom are allowable
over the cited art.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application
are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is
respectfully requested.

The Commissioner is authorized to charge any fees due or credit any overpayment to the
deposit account of Townsend and Townsend and Crew LLP, Deposit Account No. 20-1430.

If the Examiner believes a telephone conference would expedite prosecution of this
application, please telephone the undersigned at 202-481-9900.

Respectfully submitted,

/ASKamlay/
Aaron Kamlay
Reg. No. 58813

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 202-481-9900
Fax: 415-576-0300
A4K:a4k
61436680 v1